

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEROME A. BROWN,	:	NO. 1:06-CV-00413
	:	
Petitioner,	:	
	:	OPINION AND ORDER
v.	:	
	:	
ERNIE L. MOORE, WARDEN,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's October 24, 2007 Report and Recommendation (doc. 10), to which no objection has been filed. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation and DENIES Petitioner's Petition for Writ of Habeas Corpus (doc. 1).

I. Background

On September 5, 2003, a jury in the Hamilton County Court of Common Pleas found Petitioner guilty of two counts of aggravated murder with specification, two counts of robbery with specification, and a count of robbery. The trial court thereafter sentenced him to 13 years for the robberies, and twenty years to life for the murder, to be served consecutively. Petitioner subsequently appealed and procedurally exhausted the following grounds of relief, which he raised in his Petition for Writ of Habeas Corpus: 1) that the trial court violated Peitioner's Sixth

Amendment right to confront witnesses by allowing hearsay into evidence at trial in the form of newspaper articles about the stoppage of NFL games on Sunday, September 16, 2001; 2) that the evidence adduced at trial was insufficient as a matter of law to sustain the conviction, in violation of the Fifth and Fourteenth Amendments; and 3) that the judgment of the trial court is against the manifest weight of the evidence (doc. 1). The Magistrate Judge reviewed Petitioner's Petition, and rejected Petitioner's grounds for relief in his Report and Recommendation (doc. 10). In lieu of filing objections to the Report and Recommendation before this Court within ten days, as directed by the Magistrate Judge, Petitioner prematurely filed an appeal to the Court of Appeals, which was dismissed on February 5, 2008 (doc. 13). This matter is now ripe for the Court's consideration.

II. The Magistrate Judge's Report and Recommendation (doc. 10)

The Magistrate Judge reviewed the facts of this case, as summarized by the First District Ohio Court of Appeals, and noted that six witnesses testified that Petitioner was the shooter and drove the victim's car immediately following the shooting, that Petitioner's hand print was found on the driver's side mirror of the car, and the bullet found in the victim's body was from the weapon Petitioner was identified as carrying (doc. 10). The Magistrate Judge therefore concluded that Petitioner's second ground for relief is without merit, as based on such evidence, any

rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt (Id. citing Jackson v. Virginia, 443 U.S. 307, 316 (1979)). The Magistrate Judge further noted that the Ohio Court of Appeals rejected Petitioner's argument based on hearsay evidence, because the record showed the trial court did not admit the disputed exhibits (Id.). Absent any evidence or argument challenging the factual finding that the exhibits were not admitted, the Magistrate Judge concluded Petitioner's first ground for relief is without merit and should be denied (Id. citing 28 U.S.C. § 2254(e)(1)). Finally, the Magistrate Judge rejected Petitioner's final ground for relief, as any claim that his convictions were against the manifest weight of the evidence raises issues of state law that is not cognizable in habeas corpus (Id. citing 28 U.S.C. § 2254(a), Pulley v. Harris, 465 U.S. 37, 41 (1984)). The Magistrate Judge concluded, after his review of the record and each of Petitioner's grounds for relief, that Petitioner's Petition for a Writ of Habeas Corpus should be denied, that a certificate of appealability should not issue with respect to the claims alleged in the Petition, and that Petitioner should be denied leave to appeal in forma pauperis upon a showing of financial necessity (Id.).

III. Discussion

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-reasoned,

thorough, and correct. The Court notes that Petitioner failed to file any objections, and in any event, finds well-taken the Magistrate Judge's conclusion that the jury was rational in finding evidence beyond a reasonable doubt supporting the essential elements of the charged crimes. Jackson v. Virginia, 443 U.S. 307, 316 (1979). Moreover, the Court concludes Petitioner's claim that hearsay evidence prejudiced his right to confront witnesses is unsupported by the record, which shows no such evidence was admitted by the trial court. Finally, the Court finds well-taken the Magistrate Judge's conclusion that Petitioner's remaining ground relating to the manifest weight of the evidence is not cognizable in habeas corpus. 28 U.S.C. § 2254(a), Pulley v. Harris, 465 U.S. 37, 41 (1984).

The Parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including, that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in all respects (doc. 10), DENIES with prejudice Petitioner's petition for a writ of habeas pursuant to 28 U.S.C. § 2254 (doc. 1). The Court further DECLINES to issue

a certificate of appealability with respect to Petitioner's claims alleged in the Petition, because Petitioner has failed to make a substantial showing of the denial of a constitutional right based on any of his claims. 28 U.S.C. § 2253(c), Fed. R. App. P. 22(b). Finally, with respect to any application by Petitioner to proceed on appeal in forma pauperis, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in "good faith," and so the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a), Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: September 9, 2008

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge